

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

GABRIEL GRIFFIN,

Petitioner,

v.

Case No. 15-C-140

**MICHAEL HAFEMANN
Superintendent of the Milwaukee
County House of Corrections,**

Respondent.

DECISION AND ORDER

Pro se Petitioner Gabriel Griffin (“Griffin”) filed a motion for reconsideration of this Court’s Decision and Order and final judgment dismissing his petition for a writ of habeas corpus without prejudice for failure to exhaust his state remedies. Because Griffin’s motion was filed within 28 days of the entry of final judgment, it is deemed to be a motion brought pursuant to Rule 59(e) of the Federal Rules of Civil Procedure. Rule 59(e) requires that the moving party clearly establish a manifest error of law, or an intervening change in the controlling law, or present newly discovered evidence. *See Cosgrove v. Bartolotta*, 150 F.3d 729, 732 (7th Cir. 1998).

Griffin cites *State ex rel. McMillian v. Dickey*, 132 Wis. 2d 266, 277, 392 N.W.2d 453, 456-57 (Wis. Ct. App. 1986) abrogated on other grounds by *State ex rel. Coleman v. McCaughtry*, 290 Wis. 2d 352, 714 N.W.2d 900, 907-08 (Wis. 2006), asking that the Court accept his habeas petition. *McMillian* holds that when certiorari review is not available, habeas corpus relief may be the appropriate remedy. *McMillian* is referring to state habeas corpus remedies, see e.g. *State ex rel. Richards v. Leik*, 175 Wis. 2d 446, 453, 499 N.W.2d 276, 278-79 (Wis. Ct. App. 1993), not federal habeas corpus relief. Griffin has not established a manifest error of law or any other basis for relief under Rule 59(e) and, therefore, Griffin's motion for reconsideration is denied.

The Court also declines to issue a certificate of appealability under Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts because no reasonable jurist would disagree with this Court's procedural ruling. *Davis v. Borgen*, 349 F.3d 1027, 1028 (7th Cir. 2003)) (setting forth requirements for a certificate of appealability); see also *Evans v. Circuit Court of Cook Cty., Ill.*, 569 F.3d 665, 666 (7th Cir. 2009) (certificate of appealability is required for appeal from denial of habeas corpus petition brought under 28 U.S.C. § 2241 when the custody is the result of a state court order).

**NOW, THEREFORE, BASED ON THE FOREGOING, IT IS
HEREBY ORDERED THAT:**

Griffin's motion for reconsideration (ECF No. 8) is **DENIED**;

The Court **DECLINES TO ISSUE** a certificate of appealability; and

Dated at Milwaukee, Wisconsin, this 18th day of March, 2015.

BY THE COURT:


HON. RUDOLPH T. RANDA
U.S. District Judge